

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
AT DAYTON

4 UNITED STATES OF AMERICA,)
5 Plaintiff,) CASE NO. 3:16-CR-026-TMR
6 -vs-)
7 ROBERT STEVEN JONES,) MOTION TO SUPPRESS
8 Defendant.)

TRANSCRIPT OF PROCEEDINGS
BEFORE THE HONORABLE **THOMAS M. ROSE**,
UNITED STATES DISTRICT JUDGE, PRESIDING
MONDAY, APRIL 17, 2017
DAYTON, OH

APPEARANCES:

For the Plaintiff: **VIPAL J. PATEL, ESQ.**
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Proceedings recorded by mechanical stenography,
transcript produced by computer.

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Federal Official Court Reporter
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1 P-R-O-C-E-E-D-I-N-G-S

2:18 P.M.

2 THE COURT: We are here before the Court this
3 afternoon in the matter of the United States of America versus
4 Robert S. Jones. And this matter was scheduled this afternoon
5 for the purposes of conducting a hearing on the remaining
6 portion -- remaining portions of a motion to suppress that was
7 filed by the defendant, the Court having ruled on a portion of
8 the motion to suppress but leaving, I guess it was -- what
9 branch was that, Mr. Rion?

10 MR. RION: 5.

11 THE COURT: -- 5 unruled upon, basically the issues
12 regarding statements allegedly made by Mr. Jones at his
13 residence alleging possible violations of Miranda and/or
14 involuntariness of that, of those statements. So the Court
15 set the matter.

16 There is also some indication with regard -- in the
17 motion to suppress that there could be, based upon further
18 discovery and/or expert analysis, there could be a possibility
19 of further -- of a further motion being filed in the case.
20 However, this matter was set today for the purposes of the
21 limited hearing on the statements at the residence.

22 So -- well, first, would counsel enter their appearance
23 for the record.

24 MR. PATEL: Good afternoon, Your Honor. Vipal Patel
25 and Andrew Hunt for the United States. And with us is the

1 case agent, FBI Special Agent Andrea Kinzig.

2 THE COURT: Thank you.

3 MR. RION: Jon Paul Rion for Mr. Jones.

4 THE COURT: Mr. Rion, how would we wish to proceed
5 this afternoon?

6 MR. RION: Your Honor, the Court had allowed a
7 mirror image of the hard drive to be sent to our expert in
8 Phoenix, Arizona. That has been accomplished. Our expert is
9 in the process of reviewing that as we speak. I think that
10 she received it last week or the week before. So the defense
11 needs more time to analyze that evidence that was just
12 recently shipped out there.

13 At this time, the defendant would be withdrawing Branch 5
14 of the motion to suppress that dealt with statements. It's
15 the defense understanding that at the time the arrest warrant
16 was served, a recorded statement was received by Mr. Jones.
17 There was then a brief statement made by Mr. Jones that dealt
18 with a password to a cell phone, and then at the time of his
19 arrest in November, there was a statement that was recorded as
20 well.

21 The government, it's my understanding, is not aware of
22 any other statements, nor do they intend to use any other
23 statements made by the defendant to law enforcement except for
24 those three statements. With that representation by the
25 government, then our motion would be withdrawn as related to

1 statements of Branch 5.

2 Mr. Jones has been made aware that because the expert is
3 reviewing the hard drive of the computer and the computer
4 contains a lot of information, that the time is necessary for
5 counsel to do a competent job. So we would be requesting that
6 we would have until June 1st to file any motions based upon
7 the results of either the expert or new developments in case
8 law. Knowing that the hearing wouldn't be set until June 27th
9 and given the complexity of this matter, counsel could not be
10 prepared to go to trial until mid September. Mr. Jones has
11 been made aware of those dates, and we are in agreement if the
12 Court were to set dates around those times.

13 THE COURT: So, Mr. Rion, basically you are asking
14 the Court not only to give you some additional time, or give
15 Mr. Jones some additional time to analyze this further
16 discovery or this expert information that is being compiled at
17 this point in time and possibly filing motions based upon
18 that, as well as continuing the trial date based upon the fact
19 that if the matter does not resolve and based upon the fact
20 that you are spending through June on possible discovery and
21 motions, it's going to take you an additional time then to
22 prepare for a jury trial if that's -- if that needs to happen;
23 is that correct?

24 MR. RION: It is, Your Honor.

25 THE COURT: And you have indicated here upon the

1 record that Mr. Jones understands that this oral motion to
2 continue the matter for the purposes of further filing, if
3 necessary, of motions, conduct motion hearings, and, of
4 course, the further preparation for trial, if necessary, would
5 toll any and all speedy trial calculations, the Court would
6 say from today on. It's been tolled because we've had these
7 motions pending, but since the request now is to allow further
8 time for motions filing and any possible hearing that's
9 necessary and then preparation of trial, that his motion to
10 continue would be a motion to continue or to set a trial date
11 and tolling any and all time from today until the new trial
12 date?

13 MR. RION: That's correct, Your Honor.

14 THE COURT: You believe that Mr. Jones understands
15 that fully?

16 MR. RION: He does, Your Honor.

17 THE COURT: Mr. Jones, how about that? Do you?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Obviously, every defendant has a right
20 to be tried within a certain period of time. The one thing
21 that can stop the running of that clock -- and this clock has
22 been stopped for a while because we've had these motions to
23 suppress pending -- but the other thing that can, in addition
24 to a motion to suppress, the other thing that can stop the
25 clock is motions to continue. And the Court is taking

1 Mr. Rion's oral motion here upon the record as a motion to
2 continue for the purposes of filing the motion and setting
3 trial because he is indicating to the Court that it is
4 necessary for him to further conduct discovery, analyze that
5 discovery, possibly evaluate expert information, and to
6 possibly file a motion.

7 At that point in time, of course, the Court would have to
8 set a schedule with regard to motions. And regardless of how
9 those motions turn out, if the Court needs to set a trial
10 date, everyone's going to have to prepare for trial. So he's
11 laid out a justification for this motion that all these things
12 need to be done, and to not do them or not do them
13 sufficiently would obviously be a miscarriage of justice.

14 So, however, as part of that, you understand that the
15 time, the speedy trial clock for you, is not running from
16 today until the new trial date which I believe we tentatively
17 are looking for somewhere in mid September. I think
18 specifically September the 18th. Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Understanding all of those things, do
21 you still wish the Court to grant the continuance?

22 THE DEFENDANT: Yes.

23 THE COURT: Any objection from the government,
24 Mr. Patel?

25 MR. PATEL: No, Your Honor.

1 THE COURT: Do you want to add or clarify anything
2 that we've said here?

3 MR. PATEL: No. No, Your Honor.

4 THE COURT: Well, the Court would grant the
5 withdrawal of the -- of Branch 5 of the motion. The Court is
6 going to set the following schedule, and this schedule is set
7 based upon the fact that the Court has, upon the presentation
8 of counsel and the motions that have been filed, determine
9 that this case is indeed a case in which there is detailed,
10 extensive, and complex discovery and information. There's
11 also an ongoing expert evaluation that needs to be completed,
12 and then possibly additional time to review those conclusions
13 and further documentation. So obviously we're talking about a
14 very complex matter of many issues, both factually and legal.

15 The Court does find, therefore, that we do need an
16 opportunity for counsel for the defendant to consider this
17 discovery and to determine based upon that the advisability or
18 the desirability of filing further motions; if filed, a motion
19 hearing schedule. And the Court understands that regardless
20 of how those motions may turn out, there may be the necessity
21 for preparing this complex, extensive, and somewhat detailed
22 case for trial. So, therefore, the Court does find that the
23 failure to grant this trial schedule, this extended trial
24 schedule would likely result in a miscarriage of justice and
25 would deny Mr. Jones and his counsel reasonable time necessary

1 for effective preparation.

2 So, therefore, the Court does find, within the factual
3 and legal confines of this case, that the ends of justice in
4 granting this extended trial calendar, motion and trial
5 calendar, outweigh the interests of the public and the
6 defendant in a speedy trial.

7 So the following trial calendar will be set: We're going
8 to have a motion filing deadline for June the 6th. It's my
9 understanding that it is felt that by that point in time the
10 expert information analysis and any necessary discovery with
11 regard to that would have been completed. So June the 1st for
12 any motions.

13 If motions are indeed filed, we are setting this matter
14 for a motion hearing date on June the 27th, 2017, at 9:30. I
15 think we have the day, depending on the number of motions or
16 motion filed for a hearing of that.

17 The Court would also indicate that if motions would
18 happen to not be filed at that point in time, the Court will
19 conduct that hearing anyway, just as a status hearing with
20 regard to the case, and see where we are at.

21 So motion filing deadline June the 1st, 2017. Motion
22 hearing/status conference date June the 27th, 2017, at 9:30.

23 The Court is going to, based upon the necessity of
24 preparation of this complex case, the Court is going to set
25 the jury trial for September the 18, 2017, at 9 o'clock. I

1 think we've reserved up to two weeks for that trial if
2 necessary.

3 The Court is going to toll any and all speedy trial
4 calculations from today, April the 17th, through September the
5 18th, 2017.

6 Is there anything further I need to take care of,
7 Mr. Rion?

8 MR. RION: No, Your Honor. Thank you.

9 THE COURT: Mr. Patel?

10 MR. PATEL: All those dates sound acceptable to the
11 government, Your Honor.

12 I just want to advise the Court, not knowing what this
13 motion might be or look like or feel like, you know, it's hard
14 to predict what kind of response the government would have.
15 And I just want to alert Your Honor that it could potentially
16 be something where we feel we need to brief, we need to maybe
17 retain our own expert or have our own expert provide an
18 affidavit or prepare evidence before a hearing. So it might
19 possibly be that the government is asking for additional time
20 beyond that June 27th date. I just want to make sure that the
21 Court is aware of that, that it could be in the realm of
22 possibility where we are asking for some other date other than
23 June 27th.

24 THE COURT: Many unknowns.

25 MR. PATEL: Correct, Your Honor. Other than that --

1 THE COURT: Welcome to my world, Mr. Patel.

2 MR. PATEL: Other than that, Your Honor, nothing.

3 No objections.

4 THE COURT: Well, all we can do at this point in
5 time is try to keep the matter moving. I understand that
6 there could be some unknowns here to cause us to deviate, but
7 I believe that the most important part of this, based upon
8 Mr. Rion's representation of Mr. Jones's motion to continue,
9 I'm hoping, I'm hoping that at least this trial schedule --
10 the trial date we can maybe work the other dates around -- but
11 at least the trial date will represent a goal. And hopefully
12 we can, if changes are necessary, we can do those changes
13 within that trial schedule. And we'll try to do everything we
14 can to maintain that trial schedule.

15 MR. PATEL: Understood. And we share the same
16 objective as Your Honor.

17 THE COURT: Okay. Anything further to come before
18 the Court then?

19 MR. PATEL: No, Your Honor.

20 MR. RION: No. Thank you, Judge.

21 THE COURT: All right. Thank you very much.

22 THE CLERK: All rise. The court stands in recess.

23 (Proceedings concluded at 2:33 p.m.)

1 CERTIFICATE OF REPORTER

2

3 I, Mary A. Schweinhagen, Federal Official Realtime
4 Court Reporter, in and for the United States District Court
5 for the Southern District of Ohio, do hereby certify that
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12

13 s/Mary A. Schweinhagen

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November 5, 2018

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MARY A. SCHWEINHAGEN, RDR, CRR
FEDERAL OFFICIAL COURT REPORTER

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